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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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Carl Lee Boston

v.

Virginia Cheyenne Franklin

Appeal from Geneva Circuit Court
(DR-20-900032)

MOORE, Judge.

Carl Lee Boston ("the father") appeals from an order of the Geneva Circuit Court ("the trial court") denying his motion, filed pursuant to Rule 60(b)(4), Ala. R. Civ. P., seeking relief from a judgment that, in part, awarded him specified visitation with his two children. We reverse the trial court's order denying the father's Rule 60(b)(4) motions.

Procedural History

On March 27, 2020, the father filed a complaint asserting, among other things, that Virginia Cheyenne Franklin ("the mother") had given birth to twin girls ("the children") on September 29, 2015, and that he is the biological father of the children. He sought a judgment adjudicating his paternity of the children, awarding him sole physical custody of the children, directing the mother to pay child support to him, awarding him attorney's fees, and requiring the mother to provide medical insurance for the children. The mother filed an answer to the father's complaint on April 14, 2020, asserting, among other things, that, in March 2018, the father had filed a petition in Tennessee concerning child support for the children and that a judgment had been issued by a Tennessee court directing him to pay child support to the mother in the amount of \$685 per month ("the Tennessee judgment"). The mother asserted that, because the father's paternity had already been established by the Tennessee judgment, the father's complaint should be interpreted as a petition to modify custody and child support.

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A trial was conducted on September 23, 2020, and, on September 24, 2020, the trial court entered a judgment in which it relied on the Tennessee judgment in concluding, among other things, that the standard for a modification of custody outlined in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984), was to be applied. After applying the McLendon standard, the trial court concluded that a material change of circumstances had not occurred such that a modification of custody was warranted, but it also concluded that the father was entitled to visit with the children and set out an award of certain specified visitation. The father filed a motion to alter, amend, or vacate the trial court's judgment, pursuant to Rule 59, Ala. R. Civ. P., on October 26, 2020, asserting that the trial court had erred in applying the McLendon standard to his claim for custody of the children and that the award of visitation was not supported by the evidence.¹ The trial court set that motion for a hearing

¹Pursuant to Rule 59, Ala. R. Civ. P., the father generally had 30 days from the entry of the judgment to file his postjudgment motion. However, because the 30th day following the entry of the judgment on September 24, 2020 -- October 24, 2020 -- fell on a Saturday, the deadline was extended to Monday, October 26, 2020, by operation of Rule 6, Ala. R. Civ. P.

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on November 25, 2020. On November 24, 2020, the father filed a motion, pursuant to Rule 60(b)(4), Ala. R. Civ. P., seeking relief from the September 24, 2020, judgment. He asserted that the trial court had lacked subject-matter jurisdiction to enter the September 24, 2020, judgment because, he said, it had purported to modify the Tennessee judgment despite the fact that the Tennessee judgment had not been registered by the trial court, as required by both the Uniform Interstate Family Support Act ("the UIFSA"), Ala. Code 1975, § 30-3D-101 et seq., and the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), Ala. Code 1975, § 30-3B-101 et seq. On November 25, 2020, the trial court entered an order denying both the father's motion to alter, amend, or vacate the September 24, 2020, judgment and his motion for relief from that judgment. The father filed his notice of appeal to this court on January 6, 2021, specifically challenging the denial of his Rule 60(b)(4) motion.

Standard of Review

"A trial court's ruling on a Rule 60(b)(4)[, Ala. R. Civ. P.,] motion is subject to de novo review. Bank of America Corp. v.

Edwards, 881 So. 2d 403 (Ala. 2003). In Bank of America, supra, our supreme court stated:

" " "The standard of review on appeal from the denial of relief under Rule 60(b)(4) is not whether there has been an abuse of discretion. When the grant or denial of relief turns on the validity of the judgment, as under Rule 60(b)(4), discretion has no place. If the judgment is valid, it must stand; if it is void, it must be set aside. A judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process. Satterfield v. Winston Industries, Inc., 553 So. 2d 61 (Ala. 1989)." "

"881 So. 2d at 405, quoting Image Auto, Inc. v. Mike Kelley Enters., Inc., 823 So. 2d 655, 657 (Ala. 2001), quoting in turn Insurance Mgmt. & Admin., Inc. v. Palomar Ins. Corp., 590 So. 2d 209, 212 (Ala. 1991). See also Northbrook Indem. Co. v. Westgate, Ltd., 769 So. 2d 890, 893 (Ala. 2000)."

Nichols v. Pate, 992 So. 2d 734, 736 (Ala. Civ. App. 2008).

Analysis

The father argues on appeal that the trial court erred in denying his Rule 60(b)(4) motion because, he says, the trial court lacked jurisdiction to enter the September 24, 2020, judgment. Specifically, he argues that, because the Tennessee judgment had not been registered pursuant to the UCCJEA, the trial court lacked jurisdiction to modify the terms of that

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judgment. The father cites this court's decision in Hummer v. Loftis, 276 So. 3d 215 (Ala. Civ. App. 2018), in support of his argument that the trial court lacked jurisdiction to modify the terms of the Tennessee judgment because that judgment had not been registered pursuant to the UCCJEA.

In Hummer, this court observed that

"an Alabama trial court lacks jurisdiction to modify a foreign child-custody judgment if that judgment has not been properly registered pursuant to § 30-3B-306[, Ala. Code 1975,] of the UCCJEA. See 30-3B-306(b), Ala. Code 1975 ('A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2, a registered child custody determination of a court of another state.')."

276 So. 3d at 222. Because the trial court relied on the Tennessee judgment in concluding that the McLendon standard for a modification of custody applied, the trial court clearly acknowledged that the Tennessee judgment was a child-custody determination made by a court of another state, as referenced in the UCCJEA. Despite that acknowledgment, the father is correct that the Tennessee judgment does not appear in the record on appeal, and there is nothing in the record suggesting that the trial court had the contents of the Tennessee judgment before it at any time. Thus, the registration requirements of the UCCJEA have not been

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met and the trial court lacked jurisdiction to modify the Tennessee judgment. See Hummer, supra.

Although the father only cursorily addresses the UIFSA, we note that the trial court also did not acquire jurisdiction over the father's claim for child support against the mother. Like the provisions of the UCCJEA applicable in this case, the UIFSA requires a party seeking to modify a child-support order issued in another state to first register that existing support order. § 30-3D-611, Ala. Code 1975. Sections 30-3D-602 and 30-3D-609, Ala. Code 1975, provide the procedure for registering a foreign child-support order in this state so that a trial court in this state can acquire jurisdiction to modify the foreign child-support order pursuant to the UIFSA. The father sought a modification of the child-support provisions of the Tennessee judgment; he failed, however, to register that judgment, as required by the UIFSA. This court has held that a failure to substantially comply with the registration requirements of § 30-3D-602(a) deprives a trial court of subject-matter jurisdiction to enforce or to modify a foreign child-support order. See Hummer, 276 So. 3d at 219; Ex parte Reynolds, 209 So. 3d 1122, 1128 (Ala. Civ. App. 2016). As discussed

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above, the Tennessee judgment does not appear in the record on appeal despite the trial court's reliance on that judgment in outlining its standard of review. Because the registration requirements of the UIFSA have not been substantially complied with, the trial court did not acquire jurisdiction over the father's claim for child support.

Conclusion

Because the Tennessee judgment was not registered in accordance with the UCCJEA or the UIFSA, the trial court did not acquire jurisdiction over the father's complaint. Thus, the trial court's September 24, 2020, judgment is void, and the trial court erred in denying the father's Rule 60(b)(4) motion for relief therefrom. Accordingly, we reverse the trial court's order denying the father's Rule 60(b)(4) motion and remand the cause to the trial court for it to enter an order dismissing the father's action.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Edwards, Hanson, and Fridy, JJ., concur.